

*We are all servants of the laws to
the end that it may be possible for
us to be free.*

Cicero, *Pro Cluentio*, 66 B.C.

PRACTICE STANDARDS CRIMINAL ACTIONS

TO: Counsel and Parties
FROM: Judge Marcia S. Krieger, United States District Judge
RE: Practice Standards (Criminal Actions)

I. INTRODUCTION

A. Purpose and Authority

1. Consistent with FED.R.CRIM.P. 2, these revised practice standards are adopted to secure the just determination of every criminal proceeding. These revised practice standards shall apply to all motions and petitions filed on or after **March 1, 2004**, and to all hearings and trials conducted on or after **March 1, 2004**. They may be revised without notice and may be modified by orders entered in specific cases.

B. Relation to Local Rules

1. These practice standards supplement, not supplant or supersede, the Local Rules of Practice of the United States District Court for the District of Colorado effective April 15, 2002.

C. Access to Local Rules & Practice Standards

1. Copies of the local rules are available at <http://www.cod.uscourts.gov> under “United States District Court” at “Local Rules” and from the Clerk of Court in **Room A105**.

2. Copies of these practice standards are available at <http://www.cod.uscourts.gov> under “United States District Court” at “Judicial Officers’ Procedures” and from the Clerk of Court in **Room A105**.

II. GENERAL PROCEDURES

A. Applicable Rules

1. Those appearing in the District Court must know and follow:
 - a. The Federal Rules of Criminal Procedure;
 - b. The Federal Rules of Evidence; and
 - c. The Local Rules of Practice of the United States District Court for the District of Colorado effective April 15, 2002.

B. Communications with Chambers

1. All pleadings must be filed in the Clerk's Office (**Room A105**). However, if the pleading filed will require a hearing to be conducted within the following five business days or will require prompt action or consideration by the Court, please mark the copy given to the Clerk for "immediate delivery to chambers" and call chambers to confirm delivery. You may also use the e-mail address to transmit a PDF version of the pleading noting the date and time it was filed.
2. For information about the status of a motion or document, please contact the assigned criminal docketing clerk, **Elaine Mares**, at **303-335-2073** or utilize the **PACER** system available at <http://www.cod.uscourts.gov> under "United States District Court" at "PACER".
3. For information about courtroom technology, trial preparation, or submission of trial exhibits, please contact the courtroom deputy clerk, **Nik Zender**, at **303-335-2185**.
4. For other information or assistance, please contact **Janine Aguero** at **303-335-2289**. Please do not contact the law clerks about procedural or scheduling matters. They may speak to counsel only pursuant to the Court's specific instructions.

C. Citations

1. Citations shall be made pursuant to the most current edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (currently the 17th ed. 2000).
2. General references to cases, pleadings, depositions, or documents are insufficient if the document is more than one page in length. Whenever possible, specific references in the form of pinpoint citations shall be used to identify relevant excerpts from a document.

3. These Practice Standards should be cited as MSK Cr. Practice Standard, Part, Section, Subsection, Paragraph, and Subparagraph (e.g., MSK Cr. Practice Standard V.B.1.).

D. Continuances of Hearings and Trials

1. Motions to continue (including motions to vacate or reset) hearings and trials shall be determined pursuant to D.C.COLO.LCivR 7.1 and shall be granted only for good cause. (*See* MSK Cr. Practice Standard V.5.A.2.) Oral motions to continue made at the time of the hearing are unacceptable. Stipulations for continuance shall not be effective unless and until approved by the Court. When a motion to continue is granted, all parties will be notified as soon as practicable.

III. COURTROOM PROCEDURES

A. Court Appearances

1. Court time is valuable to the parties, counsel, and court staff. Please be prompt and prepared. If a scheduled matter is called for hearing and a party or a party's counsel is not present, the matter may be moved to the end of the docket, reset for hearing, a default entered, sanctions imposed, or other orders entered as appropriate. If a party is not prepared as required by the order setting the hearing, the matter may be reset without deference to the parties' needs; the request for relief, defense(s), or objection(s) may be denied; or other sanctions imposed. Unless otherwise directed, all matters will be heard in Courtroom 12 located on the ninth floor. Matters heard by a Magistrate Judge will be in the courtroom assigned to that Magistrate Judge.

B. Courtroom Organization and Protocol

1. The Government's table is closest to the jury box. There is one lectern in the courtroom at which all counsel and *pro se* parties shall stand to make any statement or objection. In jury trials, bench conferences are strongly discouraged and will be minimized. The defendant(s) must be present at any bench conference. Matters should be raised either before or after the trial day.

2. Please remember that the administration of an oath or affirmation is a solemn and integral part of a proceeding. Your complete attention and that of everyone in the courtroom is expected and required.

3. Please observe traditional courtroom decorum: please rise to address the Court, and please request permission to approach the bench and any witness.

4. Rather than handing a witness an exhibit, counsel or a *pro se* party should

direct the witness to the appropriate exhibit already available at the witness stand or request the courtroom deputy clerk to present the exhibit to the witness.

5. If you have a question or issue about courtroom protocol, contact the courtroom deputy clerk, **Nik Zender**, at **303-335-2185**.

C. Recording of Proceedings

1. The official record of all trials and proceedings will be taken by a realtime reporter. Prior to the beginning of any proceeding, please provide the court reporter with your business card.

2. The realtime reporter assigned to the Court is **Paul Zuckerman, 303-335-2109**. Transcripts of proceedings may be ordered from Mr. Zuckerman. Requests for realtime, daily, or hourly copy must be made at least thirty (30) days before the trial or hearing. Further details can be obtained from Mr. Zuckerman.

D. Exhibits – Refer to the Trial Preparation Order.

E. Witnesses – Refer to the Trial Preparation Order.

F. Depositions

1. Together with FED.R.CIV.P. 32, this practice standard governs the use of depositions in court proceedings:

a. Disputes as to use of a proposed deposition shall be raised by motion and determined pursuant to D.C.COLO.LCivR 7.1. The Court will attempt to resolve objections before trial to facilitate appropriate redaction.

b. For jury trials, parties shall provide a person to read the deposition answers.

c. For bench trials depositions will not be read in open court. Instead, the Court will read them in chambers in any requested sequence. At the beginning of the trial, the offering party shall provide the courtroom deputy clerk with two (2) copies of the relevant deposition transcript marked as an exhibit with the offering party's designated portions highlighted in yellow and the other party's designation in blue.

G. Videotape Depositions

1. Together with FED.R.CIV.P. 32, this practice standard governs the use of

videotape depositions in court proceedings. The Court will attempt to resolve objections to any portion of a proposed videotaped deposition.

H. Special Equipment (Audio/Video)

1. The Court has audio, video, audio-visual, and other special equipment that may be used by the parties. Notify the courtroom deputy clerk, **Nik Zender, 303-335-2185**, no later than fourteen (14) days before a hearing or trial of the date and time you need such equipment or need your own equipment to be brought through security for use in the courtroom.

IV. TRIALS

A. Trial Settings

1. Counsel may obtain trial dates from chambers following arraignment. (*See* MSK Cr. Practice Standard IV.D. and E. to calculate trial time.) To determine the appropriate amount of time necessary for trial, counsel should compute the number of hours required to present testimony and for administrative matters. After the trial date is set, a Notice and Order of Initial Settings will be issued. This order will set motions deadlines, a motions hearing, and the procedure for plea agreements.

B. Trial Preparation Order

1. A Trial Preparation Order will be issued after the motions deadline has expired.

C. Trial Preparation Conference

1. The Trial Preparation Conference will be held approximately three to ten days before trial. The Court will issue a Trial Preparation Order which will confirm the trial date, confirm the Trial Preparation Conference date, and specify the tasks to be completed by and during the Trial Preparation Conference.

2. Issues to be addressed at the Trial Preparation Conference:

- a. jury selection;
- b. sequestration of witnesses;
- c. presentation of exhibits to the jury;
- d. timing of presentation of witnesses and evidence;
- e. any anticipated disputes with regard to jury instructions;
- f. anticipated evidentiary issues (need for scheduling of hearings outside the presence of the jury);

- g. any stipulations as to fact or law; and
- h. any other issue affecting the duration or course of the trial.

D. Bench Trials

1. Bench trials will begin on Tuesday morning at 9:00 a.m. Trial days run as with jury trials. *See* MSK Cr. Practice Standard IV.E., below. Counsel and *pro se* parties shall be present at 8:30 a.m. to check in with the courtroom deputy clerk.

E. Jury Trials

1. Jury trials will begin with jury selection on Monday afternoon at 1:30 p.m., with the trial commencing after jury selection. Counsel and *pro se* parties shall be present thirty (30) minutes prior to the scheduled trial time to discuss trial preparation matters with the courtroom deputy clerk. Commencing the second day of trial, the normal trial day will begin at 8:30-9:00 a.m. and continue until 4:00-5:00 p.m. Time permitting, motions *in limine* or preliminary matters will be heard before or after the trial day; however, hearings in other cases may also be set for such times. The trial day will have periodic morning and afternoon recesses of approximately ten (10) minutes duration. A lunch break will be scheduled for one to one and one-half hours, beginning sometime between 11:30 a.m. and 12:30 p.m., depending on the exigencies of trial.

2. *Voir Dire* – governed by the Trial Preparation Order.

3. *Batson* challenges [*See Batson v. Kentucky*, 476 U.S. 79 (1986)] shall be made and considered at the conclusion of *voir dire* examination by the Court, but before the jury is seated and sworn.

4. Jury Instructions and Verdict Forms – governed by the Trial Preparation Order.

5. Jurors will be permitted to take notes during the trial. The jury will be instructed by the Court before closing argument. Each juror will be given copies of the written jury instructions (but not verdict forms) for their use and consideration during deliberations. These will be destroyed with each juror's notes after the jury is discharged.

V. MOTION PRACTICE

A. Motions.

1. The Notice and Order of Initial Settings sets two motion filing deadlines and a motions hearing date. The first deadline is for filing of pretrial motions other than motions to suppress; the second is for filing responses to pretrial motions and for filing motions to suppress. The motions hearing is not a status conference. If no motions are

filed, or all have been resolved, the motions hearing automatically will be vacated. Please make every effort to resolve pending motions before the motion hearing. File appropriate documents to resolve or withdraw motions if there is no dispute to be determined.

2. Motions for extension of time require a showing of good cause. Mere agreement among counsel does not constitute good cause. Furthermore, unless circumstances are extraordinary, demonstrating that they were unavailable or unanticipated, the following will not be treated as good cause: inconvenience to counsel, press of other business or schedule conflicts (especially when more than one attorney has entered an appearance for a party).

3. An unopposed motion shall be designated as such and a proposed order shall be submitted. A response shall clearly and completely identify by the title and docket number or date filed the antecedent motion or petition to which response is made. Similarly, a reply shall clearly and completely identify by title and docket number or date filed the antecedent response to which reply is made.

B. Motions *in Limine* & Trial Briefs

1. Motions *in Limine* are strongly discouraged when the motion is evidence driven and cannot be resolved until evidence is presented at trial.

2. Trial briefs may be filed. Trial briefs shall not exceed ten (10) pages and filed no later than five (5) business days before trial. Please flag evidentiary issues in a trial brief rather than by motion *in limine*.